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IN THE UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

In re TULARE LOCAL HEALTHCARE DISTRICT, dba TULARE REGIONAL MEDICAL CENTER, Debtor. Tax ID #: 94-6002897 Address: 869 N. Cherry Street Tulare, CA 93274	Case No. 17-13797 DC No.: WW-1 Chapter 9 Judge: Hon. Rene Lastreto II Date: October 19, 2017 Time: 2:00 p.m. Crtrm.: 13

DECLARATION OF TIMOTHY L. THOMPSON
IN SUPPORT OF MOTION FOR AUTHORIZATION TO REJECT EXECUTORY CONTRACT OF HEALTHCARE CONGLOMERATE ASSOCIATES, LLC

I, Timothy L. Thompson, declare as follows:

1. I am an attorney duly admitted to practice before the Courts of the State of California and before this Court. I am a partner with the law firm of McCormick, Barstow, Sheppard, Wayte & Carruth LLP, attorneys of record for Debtor TULARE LOCAL HEALTHCARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER ("TRMC" or the "District") in the above-entitled action.

2. If called as a witness, I would and could competently testify to all facts stated herein from my personal knowledge except where stated upon information and belief and, as to these matters, I am informed and believe them to be true. I am submitting this Declaration in support of the District's motion to reject is executory Management Services Agreement ("MSA") with Healthcare Conglomerate Associates, LLC ("HCCA").

3. Following the retention of our law firm by TRMC on July 27, 2017, we began efforts to obtain from HCCA and its attorneys at the Orrick and Baker Hostetler law firms, financial information which was critically necessary for the Board to analyze and evaluate the financial condition of TRMC. In addition, board members were being informed from various sources that HCCA was attempting to obtain a loan using the District's personal and real property as collateral even though the Board had taken action on July 27, 2017, to rescind resolution Nos. 851 and 852, effectively terminating HCCA's authority to enter into loans secured by District property on behalf of TRMC without the express approval of the Board. Accordingly, we initiated good faith efforts to obtain financial information from HCCA and Dr. Benzeevi. These requests, over the last two and a half months, were made both orally and in writing, and the following chronicles some of those significant exchanges of correspondence.

4. On September 1, 2017, we sent the letter attached hereto as Exhibit "A" to HCCA's counsel, Mr. Marshall Grossman of the Orrick firm and Mr. Bruce Greene of the

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Baker Hostetler firm. In this letter, I reminded them of the Board's decision to limit HCCA's ability to obtain loans collateralized by the District's property without obtaining further approval. In addition, we invited HCCA to provide the Board with the relevant financial information necessary for the Board to determine if a loan was in the best interest of the District by making the following requests:

> "To the extent that HCCA believes that the above-described loan, or some other loan is necessary, for the District's operation and maintenance of the Tulare Regional Medical Center, a loan proposal must be presented to the Board for its review and consideration. Such presentation should include the terms of the loan, the proposed lender, any planned security interest or pledge of the District's property, a disclosure of any and all personal interest that Dr. Benzeevi or any of his family members have in the proposed lending company, disclosure of any and all personal benefits or payments that Dr. Benzeevi or any of his family members would receive from the loan, disclosure of any potential conflicts of interest relating to the loan, the purpose of the loan, and HCCA's intended use and allocation of the funds received from the lender. If presented with this information, the Board will promptly consider the request and schedule a meeting to review, analyze, and determine whether or not to authorize the request." (Ex. "A")

5. In response, I received an email on September 1 from Mr. Grossman stating that he was out of the office and would deal with the content of the letter the following Tuesday. (See Ex. "B").

6. On September 6, 2017, my partner Mandy Jeffcoach and I traveled to Sacramento for a meeting with Mr. Grossman and his colleague, Mr. Marc Levinson. We were told the purpose of this meeting, among others, was to meet Mr. Levinson, who is an experienced bankruptcy attorney that HCCA requested to outline for us why a Chapter 9 was not in the District's best interest and other solutions he and Mr. Grossman wanted to present regarding HCCA's plan to resolve the District's financial problems and the pending dispute HCCA was causing in not recognizing the election of Senovia Gutierrez as a properly seated and acting board member. During that meeting, among other topics, we disclosed to Mr. Grossman and Mr. Levinson the need for HCCA/Dr. Benzeevi to provide current financial information as well as information about any loans that were being pursued. They

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acknowledged understanding the Board's need for such information and requested that we send a letter identifying the financial information the Board was requesting. There was no discussion or agreement that the requests would be limited to "10 in number", which was later claimed by Mr. Levinson when refusing on behalf of his clients to comply with the requests for financial information.

7. On September 11, 2017, I sent the letter attached hereto as Exhibit "C" to Mr. Levinson and Mr. Grossman. As the court can see from reviewing Exhibit "C", we requested on behalf of the Board basic financial information which would allow the Board to determine the current financial condition of the District. This request was necessary as none of the board members believed they had received current and accurate reporting from HCCA on the District's financial condition and incomplete responses, or no response at all, had been received to previous requests Board members had made for similar information.

8. On September 12, 2017, I received the email, along with certain identified attachments, attached hereto as Exhibit "D" from Mr. Levinson. As the court can see from reviewing Exhibit "D", Mr. Levinson was merely providing documents that had already been supplied to the Board at a prior board meeting rather than complying with the requests for detailed financial information necessary for the Board's independent evaluation of the District's current financial condition.

9. On September 12, 2017 I sent the letter attached hereto as Exhibit "E" to Mr. Levinson and Mr. Grossman expressing our disappointment in HCCA's refusal to comply with the District's request for financial information.

10. On September 26, 2017, I received the two emails attached hereto as Exhibit "F" from Mr. Levinson at approximately 8:30 AM. As the court can see from these emails, Mr. Levinson forwarded to us on behalf of his clients financial reports from 2015 which he stated had been previously produced to the Board, but did not provide the detailed specific information requested in our letter of September 11. I believe this information was only sent on September 26 due to the fact a board meeting was scheduled for the next day,

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September 27, and HCCA/Dr. Benzeevi wanted to claim they had provided the Board with some financial information.

11. Later on September 26, 2017, at approximately 4:00 PM, I received two more emails from Mr. Levinson with similar previously provided financial information for 2016. These two emails and the attachments I received with them are attached hereto as Exhibit "G". Again, this information did not provide the detailed specific information requested in our letter of September 11 on behalf of the Board.

12. Finally, on September 27, 2017, at approximately 11:40 AM (See, Ex."G"), Mr. Levinson sent yet another email to which he attached similar financial information for 2017 which he stated had previously been provided to the Board. Again, no new or detailed specific information as requested in our letter of September 11th was produced.

13. On September 27, 2017, the District conducted its regular public/open board meeting which I attended. During the open meeting, both Mr. Alan Germany, the CFO of HCCA, and Dr. Benzeevi made a presentation to the Board and public who was present concerning the District's dire financial condition.

14. The next day, on September 28, 2017, new financial disclosures and plans were announced to close the hospital by HCCA, through Mr. Germany and Dr. Benzeevi, which were reported to the Board by members of the public. These new financial disclosures and plan for an immediate closure of the hospital had not been reported to the Board by either Mr. Germany or Dr. Benzeevi in their presentation the night before. These reports and a request for further information to explain to the Board what was happening from HCCA was documented in an email I sent to HCCA's attorneys at the Orrick firm at 5:07 PM on September 28, 2017 (Ex."H" at p.3). A copy of this email chain, including the subsequent responses from HCCA's attorneys and my reply emails, are all attached hereto as Exhibit "H". As I believe the Court will see from this email chain, HCCA, through its counsel, was now claiming a lack of understanding as to what reports or information the Board was requesting to address this crisis. At 7:58 PM I sent an email which I believe was specific and yet, HCCA did not respond. The email stated:

> "Your clients know what they disclosed and failed to disclose last night at the Board meeting. The information requested is straightforward and goes directly to the health and safety of patients at TRMC: (1) has HCCA failed to pay any or all of the hospital employees,(2) have staff walked off the job or failed to report to work as a result of HCCA's failure to timely pay the hospital staff, (3) has the second floor of the hospital been closed due to the staff walking off the job, (4) is HCCA transferring or attempting to transfer the current patients (appx. 14-20) to other hospitals or otherwise discharge those patients from the hospital,(5) is HCCA attempting to discontinue emergency room services to the public, (6) has HCCA instructed staff to not admit any new patients to the hospital, and (7) is HCCA attempting to close the hospital in the near future without providing notice of that plan to the Board of Directors and without providing the required notices to the State and other agencies? You criticize the Board for relying on reports from the hospital staff, characterizing those reports as "rumors", but the people with answers to these simple questions—HCCA and Dr. Benzeevi-- refuse to provide this information to the Board. It is critical that HCCA immediately answer these questions and provide the Board with this information. The Board must be informed of what is going on at the hospital." (See, Ex. "H" at p.1-2).

15. After sending that email, we learned of a posting that was made by the Visalia Times Delta that evening on its website of a videotape taken earlier in the day during Mr. Germany's presentation to various staff members addressing why they had not been paid. I then sent another email to the Orrick attorneys at 10:29 PM with a link to the posting on the Visalia Times Delta website which was:

http://www.visaliatimesdelta.com/videos/news/2017/09/28/raw-video-trmc-officials-call-thursday-%22internal-disaster%22/106103610/. As stated in this email, we requested that HCCA/Mr. Germany provide us with the information he represented had been given to the Board the night before regarding available loans as no such information had been given to the Board. (See, Ex. "H" at p.1).

16. In response, at 11:07 PM, on September 28, 2017, I received an email from Mr. Levinson with an attached letter from Dr. Benzeevi both of which are attached hereto as Exhibit "I". In this letter, Dr. Benzeevi states, among other things, that the District is facing a "dire cash flow issue", a "CRITICAL liquidity crisis", "is COMPLETELY out of cash" and "vendors are threatening to cease providing goods and services." More concerning, since these facts were not disclosed to the Board at its meeting the night before, he states that

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"the District lacks sufficient cash to fund the entire gross payroll and that HCCA, which is owed in excess of $7 million, is unwilling to extend further credit to the District." He enclosed with this letter an old financial statement that had previously been given to the board and did not provide any of the specific information that had been previously requested in the prior weeks and that evening regarding the plans to close the hospital, alleged loans that were available to meet the District's financial crisis, etc.

17. Consequently, I sent my last responsive email that night at 11:36 PM to Mr. Levinson thanking him for attempting to have his client provide some substantive response and again requesting "full/material disclosures" from his clients to the previous requests. A copy of this email is attached hereto as Ex. "J".

18. On the morning of September 29th, when no additional or material response was received to the District's requests for information from HCCA and the Board was contacted by representatives of the California Department of Public Health ("CDPH") who was also investigating claims that HCCA was intending to close the hospital without following the notice requirements of California law, the District's Board of Directors decided that an emergency meeting of the Board was required to address the imminent risk posed by HCCA's threat of unlawful closure of the hospital and patient safety that was in jeopardy due in substantial part to the financial crisis HCCA had created in its management of the hospital. We then sent at approximately noon on September 29, 2017, a letter to HCCA/Dr. Benzeevi's counsel giving notice of the emergency meeting being called for that evening, requesting additional information from their clients and requesting that representatives of HCCA be present at the meeting to provide a detailed report to the Board of the financial condition of the District, the details of any proposed loans that HCCA believed were necessary for operational expenses, factual details regarding HCCA's failure to pay employees working at the hospital, and any efforts or plans by HCCA to close the hospital. A copy of this letter is attached hereto as Exhibit "K".

19. In response, I received an email from Mr. Grossman, apparently forwarding an email response from Mr. Levinson, at approximately 2:05 PM and sent him a response email

at 2:35 PM on September 29, 2017. Copies of these emails are attached hereto as Exhibit "L". No representative of HCCA was made available or appeared at the special board meeting that night to supply the Board with the information requested.

20. However, a process server was sent to that meeting, presumably by the Orrick attorneys, and served the Board President, Mr. Kevin Northcraft, with a summons and complaint for a lawsuit that HCCA's attorneys, the Orrick firm, filed on September 15, 2017 in the Los Angeles County Superior Court. The filing of this lawsuit had not been previously disclosed to the Board in any communications by the attorneys at Orrick or by HCCA/Dr. Benzeevi. A copy of the complaint received by Mr. Northcraft on September 29th is attached hereto as Exhibit "M". Generally, the Complaint alleges, *inter alia*, that TRMC had breached the parties' contract by failing to make available to HCCA sufficient funds to pay TRMC's obligations.

21. Previous to filing its complaint on September 15th, HCCA, through its attorneys at the Orrick firm, sent a letter on September 8, 2017, giving notice of the alleged breach of the MSA by the District. A copy of this letter is attached hereto as Exhibit "N". Among other alleged breaches, HCCA claimed in this letter the District had "… Failed to timely furnish HCCA with sufficient funds to timely pay the expenses relating to the operations, including funding of operating expenses and non-operating expenses, since at least December 21, 2016, totaling $2,118,634.60." Additionally, HCCA claimed "… the District has failed to reimburse HCCA in the amount of $5,532,047.79 for these Leased Employees since at least July 31, 2015 as required by the MSA." Lastly, HCCA claimed the District had failed to pay its management fee totaling $526,066.86 "… since at least August 1, 2017." I note that they imply they had been paid their management fees prior to August 1, 2017, although their counsel represented in court last week his understanding was they had not been paid since May 2017.

22. Because these were new claims and specific amounts which I am informed and believe the board members did not have knowledge of, I was requested by the Board to again to ask for the specific financial information that would allow the Board to meaningfully

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evaluate these claims and determine their validity. I sent Mr. Grossman my letter dated September 18, 2017, which is attached hereto as Exhibit "N(1)", requesting once again the previously requested financial information.

23. Instead of providing the information requested to validate the specific amounts sought, I received yet another letter from Mr. Grossman dated September 19, 2017, which is attached hereto as Exhibit "O". This letter is substantially similar to the September 8th letter attached as Exhibit "N", however, on page 2 it does represent that certain specific requests were submitted by HCCA to the District. Assuming these requests were submitted in writing, none of that documentation (the requests themselves or back-up data to prove the claim) was supplied to us, although it would have been responsive to our previous requests. In addition, I am informed and believe that the Board Members have no recollection of receiving such specific requests for funds.

24. In addition to filing HCCA's lawsuit against the District on September 15 (which the District had no knowledge of until the evening of September 29) Dr. Benzeevi also sent to the District's Board a letter dated September 15, 2017, which is attached hereto as Exhibit "P". In this letter, Dr. Benzeevi gives notice that HCCA ".. deems itself insecure" and that "HCCA shall have no obligation to continuing performing under the MSA more than thirty (30) days from the date of this letter, unless the District provides HCCA with an unconditional irrevocable letter of credit... from a U.S. banking institution acceptable to HCCA, insured by a federal insurance agency." The letter goes on to demand that the "Letter of Credit" must meet various requirements of the MSA and must be in the amount of the "...Termination Fee as specified in section 10(b)(ii) of the MSA ($70,000 per month first increased by the CPI, then multiplied by the remaining months of the MSA and then discounted to present value as provided in section 10(b)(ii)(1)-(2)."

25. In reviewing the Opposition which was filed to this instant motion by HCCA, we note that HCCA represents that it provided loan information to the Board for consideration to resolve the financial crisis facing the District. As referenced above in various correspondence, HCCA never provided any of the loan information to the Board that was

requested as early as our letter to them dated September 1, 2017 (Ex. "A"). However, after the filing of this Chapter 9 proceeding, Mr. Levinson, on behalf of HCCA, did forward the email with attached documentation regarding several purported loans that Dr. Benzeevi was contemplating presenting to the Board for its consideration. A copy of that email and the attachments thereto is attached as Exhibit "Q".

26. During the late afternoon of October 17, 2017, we were informed of certain pleadings and statements that were made at a hearing conducted in the United State Bankruptcy Court, Eastern District of California, Fresno Division in Case Number: 2016-10015 entitled In Re Southern Inyo Healthcare District, Debtor (the "Southern Inyo Matter"). Specifically, we were directed to the pleadings that had been filed by the Debtor in the Southern Inyo Matter through their counsel at Baker Hostetler, the same law firm that had previously represented TRMC and I understand has also represented HCCA/Dr. Benzeevi. We have submitted a separate request that this Court take judicial notice of the pleadings filed in that case by the Baker Hostetler firm as referenced on the Court's Docket as Document Numbers 325, 326, 327, and the recording of the hearing that was conducted on October 17, 2017, which is Document Number 330 in Case No. 2016-10015.

27. It is my understanding that those pleadings were filed as an emergency motion seeking authority to immediately terminate HCCA's Management Agreement or, in the alternative, for authority to modify the terms of the HCCA's Management Agreement in order to designate the Southern Inyo Board as the sole signatory on its District bank accounts.

28. I am informed and believe that the factual representations and allegations made in those pleadings may, at least in part if not substantially, explain why HCCA/Dr. Benzeevi, both directly and through their counsel at the Orrick and Baker Hostetler law firms, have not fully complied with the Tulare District's repeated requests for financial information and other information with regard to the operations at the District's hospital as outlined herein above. Specifically, attorneys for Baker Hostetler, on behalf of their client in that matter, Southern Inyo, allege a history with HCCA which is eerily similar to Tulare District's history with requesting financial and other information. Specifically, Southern Inyo alleges: the

Board requested financial information from HCCA, but such information was not provided; information provided to the Board by HCCA was false and misleading; the financial records provided to date demonstrate "mismanagement and general misconduct on the part of HCCA"; HCCA failed to properly bill services rendered by the District for nearly one year, resulting in a lack of sufficient funds to fund operations and was required to rely upon HCCA for a line of credit "thereby enriching Dr. Benzeevi, who was ultimately responsible for the failure of HCCA to properly bill and collect on account of services rendered."

29. Even more troubling are the allegations by Southern Inyo, through the Baker Hostetler law firm, that HCCA transferred funds by and between Southern Inyo and Tulare District in excess of $3 million, including "a significant transfer from the District to Tulare in late 2016 of approximately $700,000 allegedly on behalf of HCCA . . ." Adding to the concern, at oral argument, Southern Inyo's counsel from Baker Hostetler represented to the court that Southern Inyo was served with a search warrant by the Tulare County District Attorney's Office and members of law enforcement seeking documents relating to the Tulare Local Healthcare District evidencing embezzlement and other potential financial crimes that may have been committed against the District by HCCA. To say the least, these recent developments only further the Tulare District Board's loss of confidence in HCCA and highlight the need by the Board for immediate control and access to financial records and information, as well as the rejection of HCCA's Management Services Agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed by me on October 18, 2017, at Fresno, California.

Timothy L. Thompson

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